UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA Plaintiff, **v.**	Civil Action No. 8:17-cv-210 (LEK/DJS)
One Apulian red-figure pottery fish plate, VL: $4,000.00;	
One Apulian red-figure pottery hydria with handles and figures, VL: $12,000.00;	
One Hellenistic Greek terracotta hollow tanagra figure, VL: $5,000.00;	
One Etruscan black-figure two-handled amphora, VL: $9,500.00;	
One Greek bronze pilos helmet with applied wheels, VL: $15,000.00;	
One Apulian two-handled red-figure terracotta krater with figures, VL: $18,000.00;	
One Roman pale grayish globular glass sprinkler flask, VL: $3,000.00;	
One Greek coreform glass oinochoe with blue and yellow trailings, VL: $7,000.00;	
One Roman translucent streaked pale aubergine color glass amphoriskos, VL: $3,000.00;	
One Roman amber globular glass vessel, VL: $1,500.00;	
One Roman pale blue globular glass vessel, VL: $1,500.00;	

One Roman etched whitish globular glass bottle with motifs, and the inscription "Masim ... made this," VL: $10,000.00;)

One Roman iridescent squat globular glass vessel with blue trailing, VL: $1,500.00;)

One large Roman cylindrical mold-blown greenish glass bottle, VL: $4,500.00;)

One complete Apulian red-figure Greek *lebes gamikos* (wedding gift vessel) with components, VL: $30,000.00;)

One Roman green patinated bronze arm fragment, VL: $20,000.00;)

One Greek coreform glass aryballos with blue and yellow trailings, VL: $6,000.00;)

One Greek coreform deep blue glass alabastron with white & yellow trailings; VL: $5,000.00; and)

One pre-Dynastic Egyptian granite dish, VL: $4,000.00.)

Defendants.)

VERIFIED COMPLAINT OF FORFEITURE *IN REM*

Plaintiff, United States of America, by its attorneys, Richard S. Hartunian, United States Attorney for the Northern District of New York, and Sean K. O'Dowd, Assistant United States Attorney, brings this complaint and alleges as follows in accordance with Supplemental Rule G(2) of the Federal Rules of Civil Procedure.

NATURE OF ACTION

1) This is an action to forfeit and condemn to the use and benefit of the United States of America the following property (collectively, the "defendant artifacts") pursuant to 19 U.S.C. § 2609 and 19 U.S.C. § 1595a(c)(1)(A):

a) One Apulian red-figure pottery fish plate, VL: $4,000.00;

b) One Apulian red-figure pottery hydria with handles and figures, VL: $12,000.00;

c) One Hellenistic Greek terracotta hollow tanagra figure, VL: $5,000.00;

d) One Etruscan black-figure two-handled amphora, VL: $9,500.00;

e) One Greek bronze pilos helmet with applied wheels, VL: $15,000.00;

f) One Apulian two-handled red-figure terracotta krater with figures, VL: $18,000.00;

g) One Roman pale grayish globular glass sprinkler flask, VL: $3,000.00;

h) One Greek coreform glass oinochoe with blue and yellow trailings, VL: $7,000.00;

i) One Roman translucent streaked pale aubergine color glass amphoriskos, VL: $3,000.00;

j) One Roman amber globular glass vessel, VL: $1,500.00;

k) One Roman pale blue globular glass vessel, VL: $1,500.00;

l) One Roman etched whitish globular glass bottle with motifs, and the inscription "Masim ... made this," VL: $10,000.00;

m) One Roman iridescent squat globular glass vessel with blue trailing, VL: $1,500.00;

n) One large Roman cylindrical mold-blown greenish glass bottle, VL: $4,500.00;

o) One complete Apulian red-figure Greek *lebes gamikos* (wedding gift vessel) with components, VL: $30,000.00;

p) One Roman green patinated bronze arm fragment, VL: $20,000.00;

q) One Greek coreform glass aryballos with blue and yellow trailings, VL: $6,000.00;

r) One Greek coreform deep blue glass alabastron with white & yellow trailings; VL: $5,000.00; and

s) One pre-Dynastic Egyptian granite dish, VL: $4,000.00.

THE DEFENDANTS *IN REM*

2) The defendant artifacts consist of eighteen Greek, Etruscan, Apulian, and Roman artifacts seized from Walter Banko on March 30, 2015, and one Egyptian artifact seized from Walter Banko on April 2, 2015. Both seizures occurred at the Port of Champlain in Champlain, New York.

3) The eighteen artifacts seized on March 30, 2015 are as follows:

a) One pre-Dynastic Egyptian granite dish, VL: $4,000.00;

b) One Apulian red-figure pottery fish plate, VL: $4,000.00;

c) One Apulian red-figure pottery hydria with handles and figures, VL: $12,000.00;

d) One Hellenistic Greek terracotta hollow tanagra figure, VL: $5,000.00;

e) One Etruscan black-figure two-handled amphora, VL: $9,500.00;

f) One Greek bronze pilos helmet with applied wheels, VL: $15,000.00;

g) One Apulian two-handled red-figure terracotta krater with figures, VL: $18,000.00;

h) One Roman pale grayish globular glass sprinkler flask, VL: $3,000.00;

i) One Greek coreform glass oinochoe with blue and yellow trailings, VL: $7,000.00;

j) One Roman translucent streaked pale aubergine color glass amphoriskos, VL: $3,000.00;

k) One Roman amber globular glass vessel, VL: $1,500.00;

l) One Roman pale blue globular glass vessel, VL: $1,500.00;

m) One Roman etched whitish globular glass bottle with motifs, and the inscription "Masim ... made this," VL: $10,000.00;

n) One Roman iridescent squat globular glass vessel with blue trailing, VL: $1,500.00;

o) One large Roman cylindrical mold-blown greenish glass bottle, VL: $4,500.00;

p) One complete Apulian red-figure Greek *lebes gamikos* (wedding gift vessel) with components, VL: $30,000.00;

q) One Roman green patinated bronze arm fragment, VL: $20,000.00;

r) One Greek coreform glass aryballos with blue and yellow trailings, VL: $6,000.00; and

s) One Greek coreform deep blue glass alabastron with white & yellow trailings; VL: $5,000.00.

4) The Egyptian artifact seized from Walter Banko on April 2, 2015 consists of:

a) One pre-Dynastic Egyptian granite dish, VL: $4,000.00.

5) The defendant artifacts are all presently in the custody of the United States Customs and Border Protection, in Long Island, New York.

JURISDICTION AND VENUE

6) Plaintiff brings this action *in rem* in its own right to forfeit and condemn the defendant artifacts. This Court has jurisdiction over an action commenced by the United States under 28 U.S.C. § 1345 and over an action for forfeiture under 28 U.S.C. § 1355(a).

7) This Court has *in rem* jurisdiction over the defendant artifacts under 28 U.S.C. § 1355(b). Upon the filing of this complaint, the plaintiff requests that the Court issue an arrest warrant *in rem* pursuant to Supplemental Rule G(3)(b), which the plaintiff will execute upon the property pursuant to 28 U.S.C. § 1355(d) and Supplemental Rule G(3)(c).

8) Venue is proper in this district pursuant to 28 U.S.C. §§ 1355 and 1395, because the acts or omissions giving rise to the forfeiture occurred in this district.

BASIS FOR FORFEITURE

A. The Cultural Property Implementation Act, 19 U.S.C. § 2601, *et seq.*

9) The Cultural Property Implementation Act ("CPIA") of 1983 authorizes the United States to enter into bilateral agreements with member states of the Convention to protect the states' cultural patrimony from being improperly smuggled or imported into the United States. *See* 19 U.S.C. § 2601, *et seq*. The contracting states designate specific archaeological or ethnological

material covered by the agreement. *See* 19 U.S.C. § 2604. Both Italy and Greece are among the fifteen countries that have entered into agreements with the United States, and have created lists of protected artifacts. *See* 76 Fed. Reg. 74691 (Dec. 1, 2011) (Greece's list of items designated as ancient cultural property) and 76 Fed. Reg. 3012 (Jan. 19, 2011) (Italy's list of items designated as ancient cultural property).

10) If it is determined that an artifact is on a designated list, the CPIA prohibits the artifact's importation, unless the importer provides documentation from the state party authorizing its importation or other supporting documentation. *See* 19 U.S.C. § 2606; 19 C.F.R. §§ 14.104a(b) and 12.104c. Without said documentation, or application of any exemptions set forth under 19 U.S.C. § 2611, the designated artifact is subject to seizure and forfeiture to the United States under 19 U.S.C. § 2609.

11) The eighteen Greek, Etruscan, Apulian, and Roman artifacts seized from Walter Banko on March 30, 2015 were imported into the United States in violation of 19 U.S.C. § 2606, which provides:

> No designated archaeological or ethnological material that is exported (whether or not such exportation is to the United States) from the State Party after the designation of such material under section 2604 of this title may be imported into the United States unless the State Party issues a certification or other documentation which certifies that such exportation was not in violation of the laws of the State Party.

19 U.S.C. § 2606(a).

12) As property involved in a violation of 19 U.S.C. § 2606, the eighteen Greek, Etruscan, Apulian, and Roman artifacts are subject to forfeiture pursuant to 19 U.S.C. § 2609, which provides, as follows:

(b) Archaeological and ethnological material

> Any designated archaeological or ethnological material which is imported into the United States in violation of section 2606 of this title and which is forfeited to the United States under this chapter shall--
>
> (1) first be offered for return to the State Party;
>
> (2) if not returned to the State Party, be returned to a claimant with respect to whom the material was forfeited if that claimant establishes--
>
> (A) valid title to the material,
>
> (B) that the claimant is a bona fide purchaser for value of the material; or
>
> (3) if not returned to the State Party under paragraph (1) or to a claimant under paragraph (2), be disposed of in the manner prescribed by law for articles forfeited for violation of the customs laws.

19 U.S.C. § 2609(b).

B. 19 U.S.C. § 1595a

13) Although the Egyptian government is not protected under the CPIA, the pre-Dynastic Egyptian granite dish, VL: $4,000.00 is subject to forfeiture pursuant to 19 U.S.C. § 1595a as property considered "stolen" under Egyptian law. Section 1595a(c)(1)(A) provides for the seizure and forfeiture of merchandise "stolen, smuggled, or clandestinely imported or introduced" into the United States.

14) In 1983, Egypt enacted Law No. 117 entitled "The Law on the Protection of Antiquities," protecting Egypt's cultural and archaeological heritage, and the law was amended by Law No. 3, of 2010, on February 14, 2010.

15) Article 1 of amended Law No. 117 defines an antiquity as:

> 1. [T]he product of Egyptian civilization or the successive civilizations or the creation of art, sciences, literature, or religions that took place on the Egyptian Lands since the pre-historic ages and during the successive historic ages till before 100 years.

> 2. [O]f archaeological or artistic value or of historical importance as an aspect of the different aspects of Egyptian civilization or any other civilization that took place on the Egyptian lands.
>
> 3. [P]roduced and grown up on the Egyptian lands and of a historical relation thereto and also the mummies of human races and beings contemporary to them are considered like any antiquity which is being registered in accordance with this Law.

16) Article 6 of Law No. 117 states that "[a]ll real estate and movable antiquities and lands which are considered archaeological lands are considered public property except the wakfs[1] and private properties. The ownership, possession or disposal of [sic] is not permitted except in the terms and conditions stipulated in said law and its executive regulation."

17) Article 8 of Law No. 117 states:

> Trade, sale or commerce in antiquities including all antiquities held as private property shall be prohibited in accordance with the provisions of this law or legal existing possession at the time of implementation of said law [1983] or such which originates in accordance with its provisions. The owner or the possessor of any antiquity may not dispose of, allow deterioration of or leave such except after getting written consent from the Council within 60 (sixty) days at least in accordance with the procedures, terms and conditions, of which a resolution from the Minister is issued, otherwise such act shall be illegal.
>
> In all cases it is provided that such trade, sale, commerce in, or disposal of any antiquity shall transferring [sic] said antiquity outside the country by any means.
>
> The Council in all cases has the priority of having the antiquity from its owner or possessor in return for fair compensation.
>
> Any one owns [sic] any archaeological object in accordance with the provisions of this Law must notify the Council of such subject within six months starting from the beginning of March 2010 provided that such persons are required to preserve such objects until the Council registers it.
>
> Moreover, the Council may restitute, from its owners and possessors, antiquities taken of archaeological elements whenever the Board of Directors finds a national interest and upon recommendation from the

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[1] Religious endowments.

> competent Permanent Committee which possessors have in return for a valuable consideration. [sic]

FACTS

18) The facts alleged in this complaint are based upon information and belief, the sources of which are reports from the Customs and Border Protection ("CBP"), and other written and oral information officially received by the Office of the United States Attorney for the Northern District of New York.

A. Walter Banko

19) Walter M. Banko is the owner of a Walter M. Banko Ltd., a business based in Montreal, Canada, involved in the sale and importation of artifacts.

20) On July 26, 2011, Banko attempted to import two artifacts from Canada into the Port of Champlain. The shipment consisted of one Apulian Red-Figure Bell Krater with male/female figures, with an appraised value of approximately $20,000.00, and one Attic Red-Figure Skyphos with nude and robed figures, with an appraised value of approximately $35,000.

21) These two artifacts were identified as archaeological artifacts illicitly trafficked out of Italy, and were forfeited by the United States on July 24, 2015 in the Northern District of New York in *United States v. One Attic Red-Figure Skyphos and One Apulian Red-Figure Bell Krater*, No. 8:14-CV-448 (TJM-CFH). The United States government entered into a Settlement Agreement with the Italian Ministry of Cultural Heritage and Tourism, and the artifacts have since been repatriated to Italy.

B. Seizure of the Defendant Artifacts

22) In two separate shipments in the Spring of 2015, Banko again attempted to import artifacts through the Port of Champlain, New York. The consignee for both shipments was identified as Christie's of New York.

23) The first shipment was intercepted on March 30, 2015, and consisted of the eighteen Greek, Etruscan, Apulian, and Roman artifacts.

24) On April 2, 2015, Banko attempted to import a single Egyptian artifact, the pre-Dynastic Egyptian granite dish.

25) The eighteen Greek, Etruscan, Apulian, and Roman artifacts were not accompanied with the required documentation under 19 C.F.R. § 12.104c. To date, Banko has failed to provide said documentation.

26) All nineteen of the defendant artifacts were detained by Homeland Security Investigations ("HSI"). Special Agent Anthony Watson, familiar with Banko's history of trafficking illicitly obtained artifacts, inspected the shipments and requested further examination.

C. Appraisal of the Artifacts

27) Appraisal of the defendant artifacts was undertaken by New York Fine Art Appraisers ("NYFAA") on August 10, 2015. NYFAA identified, determined the origin of, and valued each artifact.

28) In a report dated January 26, 2016, NYFAA evaluated each of the defendant artifacts to determine whether the artifacts were located on their respective country's "designated lists" of property requiring documentation from the state party authorizing its importation or other supporting documentation, as described in Paragraph 10, supra. NYFAA concluded that all but one artifact – the defendant pre-Dynastic Egyptian granite dish – were protected by at least one designated list.

29) The defendant artifacts were appraised at fair market value for $160,500.00, and the replacement value was calculated at $203,500.00.

D. Claims

30) On August 26, 2015, CBP's Fines, Penalties, and Forfeiture Officer for the Port of Champlain sent Banko notice of the seizure, informing him that the artifacts were subject to forfeiture pursuant to 19 U.S.C. § 1595a(c)(1)(A) and 19 U.S.C. § 2609.

31) After granting Banko's request for an extension of time by which to file his claim, CBP received Banko's Election of Proceedings form on October 5, 2015, with which Banko concurrently submitted a cost bond in the amount of $5,000.00 pursuant to 19 U.S.C. § 1608, 19 C.F.R. § 162.47.

32) Notice of the forfeiture proceedings were also sent to the appropriate authorities in Egypt, Italy, and Greece.

33) On September 23, 2015, the Italian Ministry of Cultural Heritage and Tourism submitted an Election of Proceedings form, claiming ownership of the following six defendant artifacts:

a) one Apulian red-figure pottery fish plate, VL: $4,000.00;

b) one Apulian red-figure pottery hydria with handles and figures, VL: $12,000.00;

c) one Hellenistic Greek terracotta hollow tanagra figure, $5,000.00;

d) one Etruscan black-figure two-handled amphora, VL: $9,500.00;

e) one Apulian two-handled red-figure terracotta krater with figures, VL: $18,000.00; and

f) one complete Apulian red-figure Greek *lebes gamikos* with components, VL: $30,000.00.

34) On October 29, 2015, the Arab Republic of Egypt's Ministry of Antiquates submitted an Election of Proceedings form as to the defendant pre-Dynastic Egyptian granite dish.

35) Greek officials were contacted and have indicated interest in filing a claim for the artifacts of Greek origin.

WHEREFORE, the United States of America prays that process of issue in due form of law, according to the course of this Court in actions *in rem*, against the defendant artifacts and that a warrant issue for the arrest of the defendant artifacts as more particularly described herein; that all persons having any interest therein be cited to appear herein and answer the complaint; that a judgment be entered declaring the defendant condemned and forfeited to the United States of America for disposition in accordance with law; that the costs of this suit be paid to and recovered by the United States of America; and that the United States be granted such other and further relief as this Court may deem just and proper.

Dated: February 23, 2017

RICHARD S. HARTUNIAN
United States Attorney

By: */s/ Sean K. O'Dowd*
Sean K. O'Dowd
Assistant United States Attorney
Bar Roll No. 518067

VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF CLINTON)

Anthony Watson, being duly sworn, deposes and states:

I am a Special Agent with Homeland Security Investigations. I have read the foregoing Complaint for Forfeiture and assert that the facts contained therein are true to the best of my knowledge and belief, based upon knowledge possessed by me and/or on information received from other law enforcement officers.

Dated this 14th day of December, 2016.

SA/HSI

Special Agent Anthony Watson
Homeland Security Investigations

Sworn to and subscribed before me this 14th day of December, 2016.

Notary Public

MARYANNE E. DOODY
Notary Public, State of New York
Reg. No. 01DO6342863
Qualified in Clinton County
Commission Expires May 31, 2020